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OFFICE OF PETITIONS

In re Application of :
Michael O. Rocheleau :
Application Number: 10/823299 : ON PETITION
Filing Date: 04/13/2004 :
Attorney Docket Number: MT-136 :

This is a decision on the "Petition to Withdraw Holding of Abandonment Based on Failure To Receive Office Action," filed on 3 April, 2007.

This application became abandoned on 7 February, 2007, for failure to timely submit the issue and publication fees in response to the Notice of Allowance and Fee(s) Due mailed on 6 November, 2006, which set a three (3) month statutory period for reply. Notice of Abandonment was mailed on 6 March, 2007.

Petitioner asserts that the Notice of Allowance was not received and a search of the file jacket and docket record indicates that this Office Communication was not received.

A review of the record indicates no irregularity in the mailing of the Notice of Allowance mailed on 6 November, 2006, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be

attached to and referenced in practitioner's statement.¹ For example, if a three month period for reply was set in the Notice, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office communication.

The showing of record is insufficient to warrant withdrawal of the holding of abandonment at this time. The Notice set a three (3)-month shortened statutory period for reply. Therefore, the practitioner must submit a copy of the docket report showing all replies docketed for three (3) months from the mail date of the Notice as documentary proof of non-receipt of the Office communication.

As such the application is properly held abandoned.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." Extensions of time are permitted under 37 CFR 1.136(a). In the alternative, petitioner may wish to file a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Mail Stop Petition
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

¹ M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.

A handwritten signature in black ink, appearing to read "D. Wood".

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions